

The Honorable Brian D. Lynch
Hearing date: September 11, 2019
Hearing time: 9:00 a.m
Response date: September 4, 2019
Chapter 7
Location: Tacoma

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

HARRY JESCH,

Debtor.

No. 19-42432

RESPONSE AND OBJECTION TO
MOTION FOR RELIEF FROM STAY

COMES NOW the Chapter 7 Trustee, Kathryn A. Ellis, and in response to the Motion for Relief from Stay filed by Boeing Employees' Credit Union, states as follows:

1. The debtor filed the present Chapter 7 Bankruptcy Petition on July 26, 2019 and listed his interest in the property located at 3847 Gull Harbor¹ Rd, Olympia, WA (Docket No. 1, page 10). The debtor listed two liens against the property, one in favor of PHH Mortgage Service in the amount of \$69,427.00 and one in favor of Boeing Employees' Credit Union in the amount of \$203,000. The moving party, Boeing Employees' Credit Union, asserts that its lien is in first position and the lien of PHH Mortgage Service is in second position. See Docket No. 11, page 2.

2. From the Trustee's review of the documents recorded with the Office of the Thurston County Auditor, the debtor acquired his interest in the property by deed recorded on May 1, 1990 (Recording No. 9005010173). A Deed of Trust in favor of the sellers in the principal amount of \$52,500.00 was recorded the same day (Recording No. 9005010174). A

¹ Spelled incorrectly as "Harbour" in the present motion.

second Deed of Trust, in the principal amount of \$106,200.00 and in favor of Saxon Mortgage Inc., was recorded on February 3, 1999 (Recording No. 3208654). A third Deed of Trust, in the principal amount of \$60,000.00 and in favor of Boeing Employees' Credit Union, was recorded on June 2, 2005 (Recording No. 3736593)². A fourth Deed of Trust, in the principal amount of \$33,000.00 and in favor of Boeing Employees' Credit Union, was recorded on October 16, 2007 (Recording No. 3965176)³. A fifth Deed of Trust, in the principal amount of \$190,000.00 and in favor of Boeing Employees' Credit Union, was recorded on April 10, 2008 (Recording No. 4002142). Based on the reconveyance of certain Deeds of Trust, it appears that the order of lien priority is as follows:

Position	Beneficiary	Principal Amount
1 st position:	Joseph and Mary Stocks	\$52,500.00
2 nd position:	Bank of New York Mellon ⁴	\$106,200.00
3 rd position:	Boeing Employees' Credit Union	\$190,000.00

Accordingly, as no releases/reconveyances of the two Deeds of Trust recorded prior in time to Boeing Employees' Credit Union's Deed of Trust have been recorded, nor have any Subordination of Deed of Trust been recorded, the moving party's Deed of Trust does not appear to be in first position, as indicated by the moving party, but rather it appears to be the third position lien. Pursuant to BR 4001 (a)(1), Motions for Relief from Stay are to be made in accordance with BR 9014, which requires service of the motion and related documents upon all parties to whom the relief requested affects. There can be little question that granting a junior

² This Deed of Trust was released on April 28, 2008 (Recording No. 4005960).

³ This Deed of Trust was released on April 28, 2008 (Recording No. 4005964).

⁴ By assignment recorded on January 28, 2019, Recording No. 4667628.

1 lienholder relief from stay to foreclose an oversecured property affects the interests of the senior
2 lienholders. However, there is no indication in the record that the senior lienholders were served
3 in accordance with BR 9014. See Docket No. 11, page 5.
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5 3. In addition, the moving party has indicated that a trustee's sale of the first
6 position Deed of Trust was scheduled for August 2, 2019, but that the same had been continued
7 to September 13, 2019. Based on the moving party's apparent confusion about the priority of the
8 liens against the property, this appears to also be incorrect. A Notice of Trustee's Sale was
9 recorded on March 29, 2019 by Quality Loan Service Corp. of Washington, as trustee of Boeing
10 Employees' Credit Union's *third* position Deed of Trust, setting a trustee's sale date of August 2,
11 2019 (Recording No. 4675749). Subsequently, and before the filing of the present motion (but
12 without relief from the automatic stay), a Notice of Trustee's Sale was recorded on July 22, 2019
13 by Quality Loan Service Corp. of Washington, as trustee of Bank of New York Mellon's *second*
14 position Deed of Trust, setting a trustee's sale date of December 6, 2019 (Recording No.
15 4695359). While the undersigned has received a Notice of Continuance of Trustee's Sale,
16 continuing one of the trustee's sales to September 13, 2019, since both Notices of Trustee's Sale
17 were issued by Quality Loan Service Corp. of Washington, but neither notice was served on the
18 undersigned, and the Notice of Continuance does not refer to either Deed of Trust (by recording
19 number, recording date, or lienholder name), it is unclear which trustee's sale was purportedly
20 continued. In any event, no trustee's sale appears to have been scheduled by the first position
21 lienholders, or anyone on their behalf.
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4. Until the Trustee has had an adequate opportunity to investigate the rank and amount of liens and the value of this property, or at the very least until the moving party has correct its motion and served the same on all required parties, the Court is requested to deny the Motion for Relief from Stay.

DATED this 4th day of September, 2019.

By: /s/ Kathryn A. Ellis
Kathryn A. Ellis, Trustee

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